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LEE MEW KWAN

v.

ROYAL LAKE CLUB

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HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM J
[SUIT NO: 22NCVC-608-2011]
24 SEPTEMBER 2012

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UNINCORPORATED ASSOCIATIONS: *Club - Disciplinary proceedings - Member of club ordered to be expelled on disciplinary grounds - Member thereafter declared Persona Non Grata without due enquiry - Whether Persona Non Grata order negated member's right to stay pending appeal granted by disciplinary rules - Whether order unfair and ought to be set aside - Whether hearing of member's appeal against expulsion order conducted unfairly - Whether appeal committee seen to be unable to make objective impartial decision*

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The plaintiff sought several declarations and damages for being expelled as a member of the Royal Lake Club ('the Club') in Kuala Lumpur. At the time of her expulsion the plaintiff was a member of the Club's General Committee ('the Committee'). After the Committee and the Club in General Meeting had approved an increase in the Club's subscription rates, the Club's President obtained the approval of the Registrar of Societies ('ROS') to the increase. The plaintiff, who was against the increase, lodged a complaint with the ROS which caused one of its officials to call on the Club's Deputy President at his home. The Club's office-bearers felt the plaintiff's act of going behind the Committee to lodge a report with the ROS was improper and initiated in-house disciplinary proceedings against her. She was found guilty as charged and her expulsion was ordered. Following the expulsion order and based on an allegation that she had behaved threateningly to the Club's Secretary, the Club declared her *Persona Non Grata* without giving her a chance to explain what had happened. The plaintiff appealed against her expulsion order. The Committee sat on two occasions to discuss the merits of her appeal at length but the members involved in the discussions were all interested parties and/or witnesses in the disciplinary proceedings. A special appeal committee was finally formed to deal with the appeal but among its members who deliberated on the

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appeal was an individual against whom the plaintiff had previously lodged a complaint against. The plaintiff's appeal against the expulsion order was dismissed.

Held (allowing the claim with nominal damages of RM5,000, setting aside the *Persona Non Grata* order and making no order as to costs):

(1) The hearing of the plaintiff's appeal was conducted unfairly. The Appeal Committee had a potpourri of members, all of whom should not, in all fairness, have sat and deliberated on the matter. By the time the Appeal Committee was formed it could hardly be said that objectivity and impartiality could have been exercised as much discussion had already taken place on the appeal. (para 9)

(2) The whole process was a disciplinary proceedings and if any step was tainted with unfairness, the whole decision was rendered a nullity. (para 10)

(3) The Disciplinary Proceedings Bye-Laws 10(c) provided that the decision to expel the plaintiff would be stayed until her appeal was disposed of. The effect of the *Persona Non Grata* order, prohibiting her presence in the Club, negated the plaintiff's right to a stay pending appeal. The Club continued to enforce that order during the appeal process rendering the plaintiff's substantive right to a stay of the expulsion order nugatory without due enquiry and seriously impairing her right to a final right of appeal. (paras 10 & 11)

(4) The defendant had been unfair in imposing the *Persona Non Grata* order against the plaintiff. The evidence did not reflect anything serious to warrant such an action by the Club. At the very least the plaintiff should have been given a chance to explain her side of the story. (paras 10 & 12)

(5) Considering the factual matrix of the case in relation to the plaintiff's conduct, the court was of the view this was a fit and proper case where no order as to costs should be made. As to the claim for damages, given the facts of the case and the fact the orders made by the court more than adequately vindicated the plaintiff, the court awarded nominal damages of RM5,000. (paras 16 & 17)

Case(s) referred to:

Cooper v. Wilson [1937] 2 KB 309 ***(refd)***

Darshan Singh v. Farid Kamal Hussain [2004] 4 CLJ 410 CA ***(refd)***

Dato' Hj Talaat Hj Husain v. Chak Kong Ying [2005] 5 CLJ 221 HC ***(refd)***

Re GKN Nuts & Bolts Ltd Sports and Social Club [1982] 1 WLR 774 ***(refd)***

Lee v. Showmen's Guild of Great Britain [1952] 1 All ER 1175 ***(refd)***

Raja Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors [2005] 6 CLJ HC ***(dist)***

Rohana Ariffin & Anor v. Universiti Sains Malaysia [1989] 1 MLJ 489 ***(refd)***

Stollery v. Greyhound Racing Control Board [1972] 128 CLR 509 ***(refd)***

Tan Geok Khoon & Gerard Francis Robless v. Paya Terubong Estate Sdn Bhd [1987] 1 LNS 79 HC ***(refd)***

Tharmalingam v. Sambathan [1960] 1 LNS 144 HC ***(refd)***

Other source(s) referred to:

Ashton and Reid on Club Law, Jordons 2005, p 36, paras 2-23

Datuk Dr Hj Hamid Sultan Abu Backer, *Janab's Key to Civil Procedure*, p 462

For the plaintiff - David Mathews (Yusoff Khan & Azinuddin Karim with him); M/s Thomas Philip

For the defendant - Rishwant Singh (Gandhi Mohan Maniam with him); M/s Zul Rafique & Partners

Reported by Ashok Kumar

JUDGMENT

Prasad Sandosham Abraham J:

[1] The plaintiff seeks several declarations and a claim for damages in respect of her expulsion as a member of a renowned Social Club in Kuala Lumpur, the Royal Lake Club (hereinafter referred to as the club). The club is a well-established club nestled in the heart of one of the green lungs in the city ie, Taman Tasik Perdana or as it is still commonly referred to, as the Lake Gardens. The plaintiff at the time of her expulsion was also a member of the General Committee of the club. The defendant ie, the club maintains the plaintiff was properly expelled as a member of the club in accordance with the Club's Constitution and Bye-Laws. The trial was spread over several days and I subsequently

reserved judgment to enable parties to put in their respective written submissions. I now deliver my reasons for the findings that I have made in respect of the plaintiff's claim.

[2] Before going into the evaluation of the evidence in this case and due consideration of the arguments taken, I perhaps should consider the law on the subject before proceeding further. I refer to the case of *Tharmalingam v. Sambathan* [1960] 1 LNS 144, reported in [1961] MLJ 63 wherein it was held:

> [1] it was not necessary in the present case to examine the principle of natural justice;
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> [2] It was proved beyond doubt that there were no grounds on which the respondent could be satisfied that the appellant had acted to the detriment of the M.I.C;
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> [3] It was a condition precedent that the appellant should resort to the domestic remedies provided before resorting to the courts.

[3] It is the defendant's contention that this principle is applicable in our case, an argument which I will come to later. However the cases have developed from the position of being shackled by the constitution and or rules of social clubs to imply into the implementation of them, a sense of fair play and natural justice. I refer to the decision of the Court of Appeal in *Darshan Singh v. Farid Kamal Hussain* [2004] 4 CLJ 410 where it was held.

> (1) The respondent was a social club governed by its constitution and rules. The rules of natural justice apply to the respondent. Therefore, members could not be arbitrarily expelled or suspended by the respondent without first being given a hearing because their contracts of membership **include a duty to act fairly**. By accepting them as members and receiving their subscriptions the respondent by implication undertakes to treat them justly and in accordance with the rules.

and at p. 417 of the report where His Lordship Arifin Zakaria JCA (as he then was) said quoting Lord Denning LJ in *Lee v. Showmen's Guild of Great Britain* [1952] 1 All ER 1175, at p. 1181 and I quote:

> The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning

A to the club cases. In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion and nothing else. The court have no wish to sit on appeal from their decisions on such a matter anymore than from the decisions of a family conference. They have nothing to do with social rights or social duties. **On any expulsion they will see that there is fair play**. They will see that, that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observed the procedure laid down by the rules, but will not otherwise interfere: see *Labouchere v. Earl of Wharncliffe (18)*, *Dawkins v. Antrobus (1)*. It is very different with domestic tribunals, which sit in judgment on the members of a trade or profession. They wield powers as great, if not greater, then any exercised by the courts of law. They are usually empowered to do this for any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory, their powers are based on contract. The man is supposed to have contracted to give them these great powers, but in practice he has no choice in the matter. If he is to engage in the trade he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say: "No". A man's right to work is just as important, if not more important, to him than his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work.

[4] Whilst, this court accepts the various authorities and texts cited by counsel for the defendant, that a member like the plaintiff is bound by the constitution and bye-laws of the club as they are matters of contract that binds the plaintiff, I am of the view the implementation of these rules, must be done fairly or seen to be done fairly, and where there is a failure to do so, the court will intervene and I am further of the view the line of authorities that a member is bound by the rules incorporated in its constitution and/or bye-laws does not preclude the court from intervening where manifest unfairness is shown or there has been a breach of natural justice in the implementation of the constitution and bye-laws of the club.

[5] I now turn to the facts of this case. The plaintiff was against the proposed increase in the subscription rates for the club and made her position clear as the evidence shows. The increases were approved in a General Meeting and by the General Committee of which the plaintiff was a member. The president of the club (DW2) then approached and obtained approval from the

registrar of societies (ROS), for the increase. One would have thought the matter would end there but it didn't. It was discovered that someone from the club had lodged a complaint to the ROS and the ROS had in fact "visited" the home of the Deputy President of the club. Whilst, in the process of giving a statement to the ROS, the Deputy President noticed the name of the plaintiff as being the complainant. In view of the fact that the plaintiff was a member of the General Committee, the office bearers of the club felt strongly the behaviour of the plaintiff brought the club into disrepute and thereafter initiated disciplinary proceedings against the plaintiff.

[6] The constitution of the club provides that a disciplinary inquiry be convened and the same was done to deal with the complaint against the plaintiff, the quintessence of which was to go behind the General Committee and lodge a report with the registrar of societies (see bundle A, p. 10 and p. 52). The charge, the notes of proceedings and the reasons for the findings of the disciplinary panel are found from pp. 75 & 76 of bundle A, and at p. 652 to p. 671 of bundle C. It was the decision of the disciplinary panel to find the plaintiff guilty as charged and having considered the seriousness of the matter, ordered the plaintiff to be expelled as a member of the club. (See the grounds of decision of the disciplinary inquiry on 12 October 2010 at p. 674 of bundle C). The plaintiff was given due notice of the hearing of the disciplinary proceedings and was allowed to call witnesses in her defence which the plaintiff did. The club had complied with the disciplinary proceedings bye-laws and I find these proceedings were conducted fairly.

[7] The plaintiff then appealed against the decision of the disciplinary panel dismissing her from the club and the plaintiff lodged her appeal on 12 October 2010. (See p. 88 of bundle A. See also disciplinary bye-laws 12(a) of bundle A) to the General Committee. The first meeting of the General Committee appeal hearing was convened on 10 November 2010 and the minutes appear at pp. 685 to 690 of bundle C. My attention is drawn to minutes headed as Minutes General Committee Appeal hearing - AH2010.2A hearing at Madam Pansy Lee Mew Kwan despite the plaintiff being absent, the chairman who was a witness in the disciplinary proceedings asked the complainants to give their views on the case. There appears to have been a detailed discussion on the merits of the appeal. It was later decided to adjourn the hearing to another date.

[8] If the disciplinary bye laws were to be looked at cl. 13, 14 of the bye-laws (p. 54 of bundle A) and cl. 13(b) in particular allows for recalling of witnesses by the General Committee if deemed necessary. Here the witnesses formed part of the General Committee and together with the complainants were already looking into the appeal on the merits. The resumed hearing for the appeal was convened on 8 December 2010 (See p. 691 of bundle C - note the heading of the minutes). Here again no specific committee of the General Committee was formed in respect of the appeal of the plaintiff and interested parties by virtue of being General Committee members were present. It is also to be noted that the disciplinary panel were requested to amend their minutes. The minutes of the general meeting on 15 December 2010 (pp. 700 to 701 of the bundle C), show an appeal committee was finally formed. The composition of the committee included Mr. Venkiteswaran Sankar, who had a complaint lodged against him by the plaintiff at that time (not in dispute). The appeal committee affirmed the disciplinary panel decision despite the said Mr Venkiteswaran Sankar declaring himself not to participate in the decision-making process but was present to make up the quorum. (See pp. 687 and 688 of bundle C). However the minutes show he participated in deliberations.

[9] I find the hearing of the appeal was conducted unfairly. The appeal committee had a potpourri of members, all of whom should not in all fairness have sat in the first place and deliberated on the matter and by the time the appeal committee was eventually formed it can hardly be said that objectivity and impartiality could be exercised as much discussion had already taken place on the appeal. I refer to the case of *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia* reported in [1989] 1 MLJ 487 and to the judgment of His Lordship Edgar Joseph JR J as he then was at p. 491 and I quote:

> It was common ground that Mr Ogle was in fact present throughout the deliberations of the disciplinary authority and no reasons were vouchsafed to this court as to the necessity for his presence there. I accept that Mr Ogle did not discuss the case with members of the disciplinary authority nor did he take part in their deliberations. The fact remains, however, that he was present with the members of the disciplinary authority during their deliberations and decision.

In *Cooper v. Wilson* [1937] 2 KB 309, Greer LJ said this: A

> I think the cases relied on by *Mr Wooll R v. Essex Justices* [1927] 2 KB 475, *R v. London County Council* [1892] 1 QB 190 and *R v. Brixton Income Tax Commissioners* [1913] 29 TLR 712 establish the proposition that if the conduct of the justices is such as to give rise to a reasonable suspicion that justice does not B seem to have been done, then their decision should be set aside. It is noticeable that in all those cases it was established to the satisfaction of the court that the persons whose presence was complained of when the tribunal was considering its decision in fact took no part in the decision ... *I ask myself what would anyone* C *have thought who came into the room where the committee were sitting, after the plaintiff had gone out while those were considering their decision, and found sitting on the bench with the committee one of the respondents to the appeal who had opened the case, though he had left the calling of the witnesses to Superintendent Hughes. Such a person, if* D *reasonable, would have been likely to say to himself:*
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> > *There has been an opportunity here for one of the parties to influence the judgment of the committee, and it looks as if justice may seem not to have been done.*

And, in the same case, this is what Scott LJ said at p 344: E

> *It makes no difference whether he then discussed the case with them or not; the risk that a respondent may influence a court is so abhorrent to English notions of justice that the possibility of it or even the appearance of such a possibility is sufficient to deprive a decision of all judicial force,* F *and to render it a nullity.*

I also refer to an unreported decision of the High Court of Australia in *Stollery v. Greyhound Racing Control Board* and to the judgment of Gibbs J at p. 8 of the judgment and I quote: G

> The Court of Appeal consider that if Mr. Smith was disqualified from sitting on the Greyhound Racing Control Board ("the Board") when it came to deliberate on the question whether the appellant was guilty of any act which in the opinion of the Board was in any way detrimental to the proper control and regulation H of greyhound racing natural justice would require the decision of the Board, reached when Mr Smith was present, to be set aside. This view was correct. It is true that the Board is not a regular judicial tribunal and that it has been doubted whether the principles which require the decision of a tribunal to be set aside if a member who was interested or biased was present when the I decision was reached apply with the same strictness to the case

A of administrative bodies: *R v. London Country Council*; *Re Empire Theatre* [1894] 71 LT 638, at p. 640; *R v. Huggins* [1985] 1 QB 563, at pp. 565-566. However, when the board is adjudicating as to whether a bookmaker should be found guilty of conduct that may result in his disqualification, it is making a decision which may have a serious effect on the rights and livelihood of the B person whose conduct is called in question. Rules conferring jurisdiction of that kind must be construed as requiring that the proceedings should be carried on in accordance with the principles of natural justice, unless an intention to exclude those principles plainly appears: *Australian Workers' Union v. Bowen* [1948] 77 CLR C 601, at p. 631; *Wiseman v. Borneman* [1971] AC 297, at p. 318. No such intention appears in the rules of the Board; on the contrary, those rules required "due inquiry" in the present case - r. 21(2)(c)(iii). The principles of natural justice are not rigid or technical. "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules D under which the tribunal is acting, the subject matter that is being dealt with, and so forth": *Russel v. Duke of Norfolk* [1949] 1 All ER 109, at p. 118. *It is, however, clear that it would not be in accordance with the principles of natural justice for a person who was in truth the accuser to be present as a member of the tribunal when the* E *charge when he had promoted was heard, even if he took no actual part in the proceedings*: *R v. London County Council; Ex parte Akkersdyk* [1892] 1 QB 190, at pp. 195-196; *Dickason v. Edwards* [1910] 10 CLR 243, at pp. 252–253, 256, 263. *The very presence of a person who has brought forward a complaint may, even unconsciously, inhibit the discussions and effect the deliberations of the other members* F *of the tribunal*.

And further down in the report.

There is no suggestion that Mr Smith acted otherwise than in good faith and with a desire to do his duty. He indeed moved to withdraw, first, when the Board conferred in the course of its preliminary inquiry, and again before the Board deliberated on the questions of guilt and punishment. He should not have been persuaded to remain, at least on the second occasion when the Board considered the questions whether the appellant had been guilty as charged and, if so, what punishment should H *be imposed upon him. Although he took no part whatever in the Board's discussions, his presence as a member of the Board rendered the proceedings invalid and the decision bad.*

I also refer to the decision of the Court of Appeal referred to earlier ie, *Darshan Singh v. Farid Kamal Hussain* [2004] 4 CLJ 410 and holding 3 and I quote:

[3] The complainant or prosecutor should not participate in a decision or in an appeal from a decision **and should not even appear to participate therein**. To do so will be

> contrary to the rules of natural justice. In the present case, LY Hong could not be regarded as a complainant or prosecutor. However, he admitted listening to the version given by Gitu and had expressed his displeasure of the appellant's conduct for being in a fight again. There was nothing to suggest that LY Hong had a personal grudge against the appellant but judging by his evidence before the DC he was not at all pleased with what had happened. He seemed to suggest that the appellant was partly to blame if not wholly to blame for the incident. In the circumstances, it might be difficult for him to act impartially in considering the appeal before the Main Contractor.

And to the judgment of His Lordship Arifin Zakaria (as he then was) at p. 421 to p. 422 of the report.

> In supporting his arguments the appellant relied heavily on the case of *Rohana Ariffin & Anor. v. Universiti Sains Malaysia* [1989] 1 MLJ 487. In that case the applicants were lecturers charged with offences under Universiti Sains Malaysia (Discipline Rules) 1979. They were both found guilty by the disciplinary authority. They then applied to the High Court by way of *certiorari* to have the finding of the disciplinary authority quashed. One of the grounds advanced before the High Court was that the complainant, the registrar of the university, was present during the proceedings before the disciplinary authority. It should, however, be emphasized that in that case the court found the registrar was very far from being a mere nominal complainant and had shown active partisanship in the proceedings before the disciplinary authority. The High Court allowed their application and quashed the decision of disciplinary authority. *The principle that may be distilled from that case and the line of authorities referred to in that case is that, the complainant or prosecutor should not participate in a decision or in an appeal from a decision, and should not even appear to participate; to do so would be contrary to the rule of natural justice.*

[10] The whole process is a disciplinary proceeding and if any step is tainted with unfairness the whole decision would be rendered a nullity. I would vitiate the findings against the plaintiff. Looking at the Disciplinary Proceedings Bye-Laws, 10(c) it clearly provides the decision to expel the plaintiff would be stayed until her appeal is disposed of. The club declared the plaintiff *Persona Non Grata* on the basis of her alleged threatening behaviour to the club secretary. This decision was reached by the club without even requiring the plaintiff to proffer an explanation. This despite the fact that the effect of the *persona non grata* order would be to

A negate the plaintiff's right to a stay pending an appeal to the General Committee. The evidence does not reflect anything serious to warrant such an action by the club. At the very least, the plaintiff's side of the incident should have been given consideration. (See *Ashton and Reid on Club Law* [Jordons 2005] B p. 36 paras. 2-23.

Quoting Megarry VC in *Re GKN Nuts & Bolts Ltd Sports and Social Club* [1982] 1 WLR 774 where he said, and I quote:

> C In club cases the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, *and I think that the courts have to be ready to allow general concepts of reasonableness,* D *fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.*

[11] I refer to bundle A p. 90. The club continued to enforce its E order of *Persona Non Grata* during the appeal process. As this order was made after the plaintiff's order for expulsion by the disciplinary panel by imposing such an order, it rendered the plaintiff's substantive right to a stay of the expulsion order against her, a substantive contractual right nugatory without due enquiry. F This order also to my mind seriously impaired the plaintiff's right to her final right of appeal ie, r. 16 and 17 of the Disciplinary Bye-Laws (p. 54 of bundle A). How could the plaintiff be expected to exercise her right when her presence in the club was prohibited. The facts here differ from those in the case of *Raja* G *Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors* [2005] 6 CLJ 443 where the order for suspension was granted pending further investigation. In our instant case a decision as to the expulsion of the plaintiff had been reached and the said order affected the plaintiff's substantive right.

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[12] The club could have imposed a *persona non grata* order but after due enquiry in this case. At the very least, the plaintiff should have been given a chance to explain her side of the story. (See p. 571 of bundle B3). I therefore find the defendant has I been unfair in the imposition of a *persona non grata* order against the plaintiff and it should be set aside.

[13] Before granting the orders that I intend to make, I wish to quote part of the judgment of Justice Dato' VT Singham J in the case of *Dato' Hj Talaat Hj Husain v. Chak Kong Ying* reported in [2005] 5 CLJ 221, where he said at pp. 250-251 of the report and I quote:

> Seeking the court's intervention involving social and sports clubs should if possible be avoided where the complaint alleged is trivial in nature. Every endeavour should be made to resolve disputes between members of the club and the Club Management Committee within the ambit and rules of the club otherwise it might smear the good name of the club and as a result it could discourage people of high standing in society from contributing either financially or from contributing or offering their invaluable services to the club in the promotion of sports activities and recreational facilities for fear of being dragged to court. **Also, it could burden innocent members of the club by way of legal expenses and costs which is not in the best interests of the club**. Similarly, in the event of any dispute concerning the status and position of an ordinary member or a member of the Management Committee of a social or sports club, it should also if possible be resolved within and in accordance with the rules and ([2004] 7 MLJ 323 *Dato' Hj Talaat bin Hj Husain v. Chak Kong Yin* (VT Singham J)) ambit of the club before seeking the court's intervention so that the object of the formation of the club could be maintained and respected.

[14] As a member of the general committee if a decision is taken, the doctrine of collective responsibility requires complete adherence to that decision even if it is felt strongly that the decision is unconstitutional, then the proper thing to do is to resign and take the issue up as a member from the floor. The club has a reputation to maintain and its members expect an atmosphere of civility and relaxation as they enjoy the various facilities of the club. Divisiveness is far from their minds as they relax to music or are on the dance floor, which would embroil them as members in costs, bearing in mind a majority of members are senior in age and the club provides an avenue to unwind in the golden years of their lives.

[15] As to question of costs, I am aware that costs must follow the event except when it appears to the court that in the circumstances of the case some other order should be made (see *Janab's Key to Civil Procedure*) by the learned author, Datuk Dr Hj Hamid Sultan bin Abu Backer at p. 462 and I quote:

A The general principle envisaged in the rule is simply that costs follow the event and that the successful party is entitled to be paid his costs except when it appears to the court that in the circumstances of the case some other order should be made. The same principle was enunciated in greater detail by Parker LJ in *Ottway v. Jones*:

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> One starts with this, that, as a general principle, cost follow the event, and the successful party is entitled to be paid his costs unless there are special grounds to order otherwise, and those grounds, it is well settled, must be grounds
C connected with the cause, of action. No doubt also, where a plaintiff has wholly failed to establish his title or his right, it is impossible judicially to order the successful defendant to pay the plaintiffs costs. Indeed, as is shown by the cases to which my Lord has referred, it is there said that the occasion for the exercise of the discretion does not arise
D until the plaintiff has established his right.

[16] Having considered the factual matrix of the case in relation to the conduct of the plaintiff, the court is of the view this is a fit and proper case where no order as to costs should be made.

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[17] With regards to the claim for damages taking into consideration the facts of the case and the fact the orders made by this honourable court would more than adequately vindicate the plaintiff, the court will award nominal damages in the sum of
F RM5,000. I refer to the judgment of His Lordship Edgar Joseph Jr J (as he then was) in the case of *Tan Geok Khoon & Gerard Francis Robless v. Paya Terubong Estate Sdn Bhd* [1987] 1 LNS 79; [1988] 2 MLJ 672, particularly at p. 680 of the judgment and I quote:

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> 'Nominal damages' means a sum of money that may be spoken of, but has no existence in point of quantity.

> They do not, however, mean small damages (per Lord Halsbury in *The Mediana* [1900] AC 113 and their amount could be miniscule. Nevertheless, their practical function is twofold; first, it
H is the means of establishing, determining or protecting a legal right (*Anglo-Cyprian Agencies v. Paphos Wine Industries* [1951] 1 All ER 873) and, secondly, in the picturesque phrase of Maule J in *Beaumont v. Greathead* [1846] 2 CB 494, 499, 135 ER 1039 a "mere peg on which to hang costs".

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[18] For these reasons, I award the plaintiff a sum of RM5,000 as nominal general damages. I therefore make the following orders:

(i) OIT of prayer 45 and 47 of the statement of claim;

(ii) The order of "*persona non grata*" made by the defendant against the plaintiff on 13 October 2010 is set aside.

(iii) Damages in the sum of RM5,000 in favour of the plaintiff.

(iv) No order as to costs.